

## REMARKS

Claims 1, 3-26 and 28 are pending in this application. Claims 23-26 and 28 are rejected. Claims 1 and 3-22 are allowed. No new matter has been added. It is respectfully submitted that the pending claims define allowable subject matter.

Applicant acknowledges with appreciation the allowance of claims 1 and 3-22.

Claim 23 has again been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ami et al. (Japanese Publication No. 2004056457), hereafter Ami, in view of Yarkosky (U.S. Patent 6,895,218). Applicant respectfully traverses this rejection.

Claim 23 has been amended to recite communication system including, among other elements “a second communication module mountable to the side of the building on a different level of the building and the second communication module is configured to: receive radio signals from and transmit radio signals to the first communication module using an outward facing array of the second communication module, the radio signals propagated at least one of substantially upward and substantially downward along an outside surface of the building.” Support for these amendments can be found in the application as filed, for example, at paragraphs 0029, 0035 and 0038. Applicant respectfully submits that none of the cited references including Ami or Yarkosky describe any type of bi-directional communication between two communication modules located on the side of the building, wherein radio signals are transmitted and received from communication modules at different elevations with the radio signals propagated at least one of substantially upward and substantially downward along an outside surface of the building.

The Office Action asserts that the Ami reference discloses a signal that is “propagated at least one of (sic) substantially downward along an outside surface of the building (signal transmitted from millimeter wave transmitter 22 to receiver 23 are transmitted substantially downward along an outside surface of the building)...” (Office Action, page 3). However, the system of Ami includes a plurality of receivers 23 on different floors that receive signals from a transmitter 22 located on a top of a building. Receivers are not capable of transmitting and

transmitters are not capable of receiving. Thus, no communication module can both receive from and transmit to another communication module a radio signal propagated at least one of substantially upward and substantially downward along an outside surface of the building. Moreover, the Ami reference is directed to broadcast of television signals (unidirectional signals) not to any type of bi-directional communication.

The Office Action also asserts that although Ami “fails to specifically disclose transmit (sic) the radio signal substantially upward along an outside of the building, using an outward facing array of the communication module...” (Office Action, page 4), the Yarkosky reference makes up for the deficiency. The Office Action states that the Yarkosky reference discloses transmitting radio signals substantially upward along an outside of the building citing to Figures 1 and 5, as well as column 3, lines 55-58 of the Yarkosky reference describing an uplink signal 22 (Office Action, page 5). Applicant respectfully disagrees.

Nothing in the cited portion of the Yarkosky reference describes a signal propagating “substantially upward along an outside of the building.” The uplink signal 22 is propagated from a top of the building. Accordingly, the signal cannot be propagated substantially upward along an outside of the building as the propagation relay from which the signal is propagated is on the top of the building. Moreover, if the signal were propagated downward along the side of the building, the signal would never be received by the base station. The other signals described in Yarkosky are propagated inside the building and not outside the building. Moreover, these signals are not propagated substantially upward. None of the signals described or shown in the figures of Yarkosky are propagated substantially upward along an outside of the building. Accordingly, Applicant submits that claim 23 is allowable.

Claim 24 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ami in view of Yarkosky and further in view of Takatori. Applicant respectfully traverses this rejection.

Claim 24 depends from independent claim 23 and is allowable based at least on the dependency of this claim from claim 23. Further, even from a cursory reading of the Takatori reference, this reference fails to make up for the deficiencies of the Ami and Yarkosky references as discussed in more detail above.

Claim 25 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neill (U.S. Patent Application Publication 2004/0176027) in view of Dupray (U.S. Patent Application Publication 2004/0198386). Applicant respectfully traverses this rejection.

Claim 25 has been amended to recite a method including “receiving at a first communication module a radio signal transmitted from a second communication module, wherein the first and second communication modules are mounted to the side of a building at different elevations”, “encoding the radio signal with a predetermined code based on the elevation from which the signal was transmitted and services priorities” and “transmitting the radio signal into the building based on the predetermined code such that the communication flow of the radio signal between different elevations is determined based on the predetermined code.” Support for this amendment can be found in the application as filed, for example, at paragraph 0034.

The Office Action concedes that the O'Neill reference fails to disclose the signal encoded with a predetermined code based on the elevation from which the signal was transmitted and services priorities (Office Action, page 6). The Office Action then states that Dupray discloses a signal encoded with a predetermined code based on the elevation from which the signal was transmitted and services priorities. However, this information is then used to determine how to communicate signals, for example, the signal strength to use, but not to control communication *flow of signals between elevations* using the predetermined code. Accordingly, Applicant submits that claim 25 is allowable.

Claims 26 and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neill and Dupray in view of Yarkosky and Takatori. Applicant respectfully traverses this rejection.

Claims 26 and 28 depend from independent claim 25 and are allowable based at least on the dependency of these claims from claim 25. Further, even from a cursory reading of the Yarkosky and Takatori references, these references fail to make up for the deficiencies of the O'Neill and Dupray references as discussed in more detail above.

In view of the foregoing amendments and remarks, it is respectfully submitted that the cited references neither anticipate nor render obvious the claimed invention and the pending claims in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Date: December 8, 2008

Evan Reno Sotiriou, Reg. No. 46,247  
THE SMALL PATENT LAW GROUP LLP  
225 S. Meramec, Suite 725  
St. Louis, Missouri 63105  
314-584-4082